Comptroller of State Sales Tax, Sarawak & Anor v Petroliam Nasional Bhd (Petronas)

HIGH COURT (KUCHING) — SUIT NO KCH-21NCvC-10/11 OF 2019 (HC2)
CHRISTOPHER CHIN JC
23 JANUARY 2020

Civil Procedure — Judge — Application to recuse judge — Allegation that tenure of judicial commissioner subject to confirmation by Prime Minister who had ultimate control over defendant — Whether there was real danger of perceived bias

This was an application by the defendant seeking that the learned judicial commissioner ('the JC') be recused from these proceedings. The defendant argued that the tenure of the JC was temporary and was subject to the confirmation by the Prime Minister who was also the person with the ultimate control over the defendant, as such, there was a real danger of perceived bias. The issue for consideration was whether there was a real danger of perceived bias.

Held, dismissing the defendant's application with costs of RM50,000 to the plaintiffs:

(1) The judicial commissioners were not likely to be perceived by the informed casual observer that they were suffering from any perceived notion of being biased just because their appointment or confirmation were subjugated under the Prime Minister of Malaysia. A fair-minded observer would be informed of the supremacy of the JC's oath of office ie to decide the case based only on the relevant facts and law. Further, in reality, it was impossible to slant a decision to favour the Prime Minister because the decisions of the JC were subject to appeal and revision by the appellate court. In the present case, the defendant was seeking recusal not because of the JC as a person but on the basis of judicial commissioners as part of the judiciary. It ought to be noted that the procedures within the institution of the judiciary could not be a basis for recusal. In the present case, the learned JC found that there was no real possibility of perceived bias by a fair-minded observer having knowledge of the facts (see paras 23–24 & 26).

[Bahasa Malaysia summary

Ini adalah permohonan oleh defendan untuk memohon agar pesuruhjaya kehakiman yang bijaksana ('PK') menarik diri dari prosiding ini. Defendan berhujah bahawa tempoh perkhidmatan PK adalah sementara dan tertakluk

kepada pengesahan oleh Perdana Menteri yang juga individu yang mempunyai kawalan mutlak terhadap defendan, oleh itu, terdapat bahaya yang nyata berlakunya 'perceived bias'. Isu yang perlu dipertimbangkan adalah sama ada terdapat bahaya yang nyata akan berlakunya 'perceived bias'.

Diputuskan, menolak permohonan defendan dengan kos RM50,000 diberikan kepada plaintif-plaintif:

(1) Pesuruhjaya kehakiman tidak akan dianggap oleh 'informed casual observer' yang mempunyai kecenderungan kepada satu pihak hanya kerana pelantikan dan pengesahan jawatan mereka adalah di bawah kuasa Perdana Menteri Malaysia. Pemerhati yang berfikiran adil mengetahui tentang ketinggian sumpah jawatan PK iaitu untuk memutuskan kes hanya berdasarkan fakta-fakta dan undang-undang yang relevan. Selain itu, realitinya, adalah mustahil bagi PK untuk mengubah keputusan supaya memihak kepada Perdana Menteri kerana keputusan PK adalah tertakluk kepada rayuan dan semakan oleh mahkamah atasan. Dalam kes semasa, defendan memohon agar PK menarik diri bukan atas sebab PK sebagai individu tetapi di atas sebab peseruhjaya kehakiman sebagai sebahagian dari badan kehakiman. Perlu diingat bahawa prosedur di dalam institusi kehakiman tidak boleh dijadikan sebab untuk penarikan diri. Dalam kes semasa, PK yang bijaksana mendapati bahawa tiada bahaya yang nyata akan berlakunya 'perceived bias' oleh pemerhati berfikiran adil yang mempunyai pengetahuan tentang fakta (lihat perenggan 23–24 & 26).]

Cases referred to

Bar Council Malaysia v Tun Dato' Seri Arifin bin Zakaria & Ors (Persatuan Peguam-Peguam Muslim Malaysia, pencelah) and another case [2018] MLJU 1288; [2018] 10 CLJ 129, FC (consd)

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 MLJ 1, FC (refd)

Menteri Hal Ehwal Dalam Negeri v Raja Petra bin Raja Kamarudin [2009] 4 MLJ 484, FC (refd)

Metramac Corporation Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd) v Fawziah Holdings Sdn Bhd; Tan Sri Halim Saad & Che Abdul Daim Hj Zainuddin (interveners) [2007] 5 MLJ 501; [2007] 4 CLJ 7252, FC (refd)

Mohamed Ezam bin Mohd Nor & Ors v Ketua Polis Negara [2002] 1 MLJ 321, FC (refd)

Wong Kie Chie & Ors v Kathryn Ma Wai Fong (as the personal representative, executrix and trustee of the estate of the late Wong Kie Nai) & Anor and other appeals [2017] 3 MLJ 350, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 s 84
Federal Constitution art 122AB
Petroleum Development Act 1974 s 3, 3(2)

Talat Mahmood bin Abdul Rashid (JC Fong, Nur Azhar bin Bujang, Saferi bin Ali and Voon Yan Sin with him) (State Attorney General's Chambers) for the plaintiff.
Malik Imtiaz Ahmed bin Ghulam Sarwar (Alvin Chong with him) (Idris, Alvin Chong & Partners) for the defendant.

Christopher Chin JC:

'I paint the cot,
As truth will paint it, and as bards will not;'
(George Crabbe 1754–1832)

BACKGROUND

[1] The plaintiffs filed their writ (encl 1 — 21 November 2019) and a statement of claim (encl 2 — 21 November 2019). The defendant entered appearance and filed their defence (encl 6 — 6 December 2019).

[2] On the 6 December 2019 the defendant filed a notice of application (encl 7) seeking to stay all proceedings pending its application to have a case transmitted to the Federal Court under s 84 of the Courts of Judicature Act 1964.

[3] The defendant wrote to the Chief Judge of Sabah and Sarawak (CJ (Sabah and Sarawak)) on the 6 December 2019 and on the 11 December 2019 seeking that I be substituted with a High Court judge of the High Court of Kuching to hear these series of cases.

[4] On the 20 December 2019, the defendant filed a notice of application (encl 18) seeking that I be recused from these proceedings.

[5] I heard the parties in chambers on the 13 January 2020 and fixed ruling of encl 18 to be on the 23 January 2020.

DECISION

[6] Having considered the submissions and arguments of the parties I conclude that in the circumstances of this case in particular, there is no real or perceived danger of bias on my part by virtue of being a judicial commissioner

and I therefore dismiss the defendant's application to recuse me from hearing the matters fixed in High Court 2, of the Kuching High Court. My reasons follow.

JUDICIAL RECUSAL

[7] At the induction course conducted by the judicial academy prior to taking our oath as a judicial commissioners in April 2019, we were lectured on 'judicial recusal' by YA Tan Sri Idrus Harun FCJ. The following are excerpts from the learned FCJ's paper, and for which I offer my profound thanks to Tan Sri:

> A judge may recuse himself when a party applies for him to do so and he must step down in circumstances where there appears to be actual or apparent bias (Judicial Recusal: Masood Ahmad, University of Leicester, *The Law School Gazette*).
>
> To reiterate the point, all judges are bound to apply the law as they understand it to the facts of the individual cases as they find them. They must do so without fear or favour, affection or ill will, that is partiality or prejudice. A judge should not concern himself with or allow himself to be affected or influenced by all considerations extraneous to the particular case.

[8] And I find clear and unequivocal guidance in the additional words of YA Tan Sri Idrus:

> It is a fundamental principle that a judge should resist the temptation to yield to the pressure to recuse himself if there is no valid or sufficient ground for recusal. In law, any party seeking disqualification must establish the circumstances and situations to justify the disqualification of the judge (*Che Minah bt Remeli v Pentadbir Tanah, pejabat Tanah Besut, Trengganu & Ors* [2008] 5 MLJ 206). Judges enjoy a presumption of impartiality in the performance of their judicial functions. However, such presumption is rebuttable, but only with cogent evidence and in appropriate cases that he may recuse himself. This proposition has found favour with local cases which in summary show that *the law will not suppose a possibility of bias in a judge who is sworn to administer impartial justice and whose authority greatly depends on that presumption and idea* (*Hock Hua Bank (Sabah) Berhad v Yong Liuk Thin & 7 Ors* [1995] 2 CLJ 900; *Dato' See Teow Chuan & Ors v Ooi woon Chee & Ors and other applications* [2013] 4 MLJ 351).
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> Section 5 of the Judges' Code of Ethics 2009 admonishes judges, in the exercise of their judicial functions, to act independently on the basis of his assessment of the facts and in accordance with his understanding of the law, free from extraneous influence, inducement, pressure, threats or interference, direct or indirect from any quarter or for any reason. (Emphasis added.)

THE DEFENDANT'S ARGUMENTS (OUTLINED IN ENCL 38)

[9] The defendant's counsel took pains to assert that it is not their intention to cast any aspersions against me personally.

[10] In a nutshell, the defendant's argument in support of their application for my recusal was cantered on a real danger of perceived bias. They argued that as a judicial commissioner my tenure is temporary and is subject to the confirmation by the Prime Minister who, is also the person with the ultimate control over the defendant. The suggestion is that because of the pressure to earn confirmation to a fully-fledged High Court judge, I may decide the cases to favour the Prime Minister who wears two hats, firstly in relation to my confirmation and secondly over the affairs of the defendant. They cited:

Article 122AB (Appointment of judicial commissioner) of the Federal Constitution, paraphrasing:

> (1) For the dispatch of business of the ... High Court in Sabah and Sarawak the Yang-di Pertuan Agong acting on the advice of the Prime Minister, after consulting the Chief Justice of the Federal Court, may by order appoint to be judicial commissioners ...

and s 3 of the Petroleum Development Act 1974 where in sub-s (2):

> (2) The Corporation shall be subject to the control and direction of the Prime Minister who may from time to time issue such direction as he may deem fit.

[11] I suggested to the defendant's counsel that his argument fearing the public perception that my decision would be slanted to be beholden to the Prime Minister would be better understood had it been the plaintiffs who sought my recusal. The defendant, magnanimously replied that notwithstanding my decision either way, they, the defendant, did not want the public to harbour any perception that my decision was tainted by bias. I sense that the defendant had other reasons for applying to recuse me but as none were disclosed I will only deal with what is before me.

[12] The defendant further emphasised that this was a case of apparent or perceived bias and not actual bias and that the proper test is that there was a real danger of such.

[13] The defendant's support to their contention was centred on the decision of *Bar Council Malaysia v Tun Dato' Seri Arifin bin Zakaria & Ors (Persatuan Peguam-Peguam Muslim Malaysia, pencelah) and another case* [2018] MLJU 1288; [2018] 10 CLJ 129 (FC) ('Tun Dato Seri Arifin

Zakaria'), the Federal Court in a joint judgment of Hasan Lah, Zainun Ali, Ramly Ali, Balia Yusof Wahi, Aziah Ali, Alizatul Khair Osman FCJJ said, at p 138:

> The overriding consideration is 'that there should be confidence in the integrity of the administration of justice (*R v Gough* [1993] AC 646 at p 659). It is with this consideration in mind that Lord Hewart CJ pronounced the immortal words in *R v Sussex Justices, ex p Mc Carthy* [1924] 1 KB 256 at p 259:
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> > *... it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done*. The question therefore is not whether in this case the deputy clerk made any observation or offered any criticism which he might not properly have made or offered; the question is whether he was so related to the case in its civil aspect as to be unfit to act as clerk to the justices in the criminal matter. The answer to that question depends not upon what actually was done but upon what might appear to be done. *Nothing is to be done which creates even a suspicion that here has been an improper interference with the course of justice.* (Emphasis added.)

This observation echoes the dicta of Richard Malanjum CJ (Sabah and Sarawak) (as he then was) in *Metramac Corporation Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd) v Fawziah Holdings Sdn Bhd; Tan Sri Halim Saad & Che Abdul Daim Hj Zainuddin (interveners)* [2007] 5 MLJ 501; [2007] 4 CLJ 7252 (FC), where he said, at p 528 (MLJ); p 769 (CLJ):

> There is of course the issue of judicial independence. However, a judge must accept that the freedom attached to his adjudicative independence imposes concurrent responsibility to address only those issues properly before him, along with a duty to make every effort to maintain impartiality and objectivity in dealing with the issues and parties before him. Independence means that in the discharge of his function a judge is subject to nothing but the law and the command of his conscience. This aspect of the concept of judicial independence refers to the neutrality of mind of the judge, to his impartiality and his total freedom from irrelevant pressures. The goal of judicial independence is to ensure justice is done in individual cases and to ensure public confidence in the justice system. Le Dain J in *R v Valente* [1985] 19 CRR 354 at p 364 said:
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> > Without that confidence the system cannot command the respect and acceptance that are essential to its effective operation. It is therefore important that a tribunal should be perceived as independent as well as impartial, and that the test of independence should include that perception.

[14] Where apparent bias is concerned, the real danger of bias test is to be approached in the manner reiterated by the Federal Court in *Tun Dato Seri Arifin Zakaria* at p 140:

> The current test is as distilled by Lord Hope in *Porter v Magill* [2002] 2 AC 357 at para [103]:

> The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.

The test is an objective one. The knowledge and disposition of the hypothetical observer were further explained in *Gillies and Secretary of State for Work and Pensions* [2006] UKHL 2 at para [17]:

> The fair-minded and informed observer can be assumed to have access to all the facts that are capable of being known by members of the public generally, bearing in mind that it is the appearance that these facts give rise to that matter, not what is in the mind of the particular judge or tribunal member who is under scrutiny. It is to be assumed, as Kirby J put it in *Johnson v Johnson* [2000] 201 CLR 488, at p 509 para 53, that the observer is neither complacent nor unduly sensitive or suspicious when he examines the facts that he can look at. It is to be assumed too that he is able to distinguish between what is relevant and that he is able when exercising his judgment to decide what weight should be given to the facts that are relevant.

[15] The defendant then went on to quote, among other sources, the predicament facing judicial commissioners through the observations of Tun Hamid Mohammad in an article *Judicial Appointments As I See It* (2012) at p 1:

> Almost every appointment or promotion has a 'probation' period before a person is 'confirmed' on the appointment or promotion. The purpose is to observe whether the person can really do the job as expected of him. Academic qualification is no guarantee that a person will be an able and good worker. I have seen that from experience. Similarly, a person who appears to be suitable for the job may turn out differently due to some factors that we were not aware about him.
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> In the case of appointment as a judge, the 'probation period' is even more important. First, judgeship is a 'permanent' appointment. Once appointed, he may not be disciplined except as provided by Article 125 of the Federal Constitution. As a judge, he enjoys what goes with the independence of the judiciary, including the provision that his salary may not be reduced.

[16] The crux of the defendants argument as to how a perceived bias would arise is encapsulated in paras 29–30 of their encl 38:

> 29. Given the controversy surrounding the dispute, the nature of the claim and the parties to the underlying proceedings, by way of its advocates letter of 6.12.2019, the Defendant requested that the Chief Judge of Sabah and Sarawak ('CJSS') exercise his powers under section 20, Courts of Judicature Act 1964 ('CJA') to transfer the action herein to a judge of the High Court at Kuching.
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> 30. The matters stated above were drawn to the attention of the CJSS. Additionally, it was pointed out that the Prime Minister, to whom PETRONAS was under control and direction of by virtue of section 3(2), PDA 21, was also vested with the

power to advise the YDPA in so far as the appointment of the learned Judicial Commissioner was concerned. A

ARGUMENTS BY THE PLAINTIFF AGAINST THE RECUSAL

[17] The plaintiff's submission (encl 33) took a slightly different tack and emphasised firstly, the fundamental concept of judicial independence and secondly, that the defendant's ground of 'real danger of apparent bias' does not fall with the test of 'real danger of bias'. B

[18] On the issue of judicial independence, the plaintiffs refer to the judicial commissioner's oath of office (cited below). They argued that if the defendant did not cast any aspersions on my integrity then there should not have any fear that I would decide these cases impartially and without fear or favour — judicial attributes of character I must be deemed to have, otherwise I would not have been appointed in the first place: C D

> With his competency and integrity there should be no reason to imply that he could not handle case of a 'controversial nature' (at para 3.3 encl 33).
>
> For the above reasons, this application must be dismissed. To allow it would set an unwelcomed precedent for litigants to get JCs replaced simply because they want a 'tenured' Judge to hear their cases. This would undermine the system of appointing Judicial Commissioners'. E

[19] As regards the defendant's argument of a real danger of apparent bias the plaintiff argue that this is unfounded as the defendants have stated that my integrity is not doubted. F

[20] The test to be adopted is the 'real danger of bias test' propounded by the Federal Court in *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 MLJ 1. G

[21] In *Mohamed Ezam bin Mohd Nor & Ors v Ketua Polis Negara* [2002] 1 MLJ 321 the Federal Court ruled, inter alia: H

> In Malaysia, this court in *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 MLJ 1 followed the 'real danger of bias' test in *Gough* as 'this will avoid setting aside of judgment upon quite insubstantial grounds and the flimsiest pretexts of bias' (at p 70). I

[22] In *Menteri Hal Ehwal Dalam Negeri v Raja Petra bin Raja Kamarudin* [2009] 4 MLJ 484, Nik Hashim FCJ (as he then was) ruled:

A It is now necessary to deal with the merits of the recusal application. On the question of judicial bias, the law in this area is settled. The test is premised on the 'real danger of bias' as propounded in *R v Gough* [1993] AC 646 which was approved and applied by the Federal Court in numerous cases ...

B MY DECISION

[23] Having weighed the eloquent arguments by counsel and considered whether there is a real danger of perceived bias, it is my considered view that I, and all judicial commissioners for that matter, are not likely to be perceived by C the informed casual observer that I/we are suffering from any perceived notion of being biased just because our appointment/confirmation like the affairs of Petronas, are subjugated under the Prime Minister of Malaysia.

[24] A fair minded observer will not perceive any bias on my part as he D would be informed of the following:

(a) oath of office:

(i) at the outset I will be the first to admit that I, and I suspect many other judicial commissioners, suffer the anxiety of whether I/we E will be considered good enough by the judicial appointments commission (JAC) to be confirmed as a judge at the end of our two year 'probation'. Speaking for myself, the thought of satisfying the Prime Minister to achieve this end, was never in my contemplation;

F (ii) what is abundantly clear in my mind is the starting point and guiding light of my service on the bench, and it starts with the solemn oath of office taken before YAA the Chief Justice, The President of the Court of Appeal and The Chief Justices of Sabah and Sarawak, and Malaya, among other appellate judges at the G august and imposing Palace of Justice, Putrajaya;

(iii) above the anxiety of confirmation, the mental challenges transiting from private legal practice to the bench, the change in lifestyle choices and for me the loneliness of the bench — is the supremacy of performing my sworn oath that:

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> dengan sesungguhnya bersumpah bahawa saya akan dengan jujur menunaikan kewajipan-kewajipan kehakiman saya dalam jawatan itu dengan segala daya upaya saya, bahawa saya akan menumpahkan taat setia yang benar kepada Malaysia, dan akan memelihara, melindungi dan memertahankan Pelembagaannya;

I

(iv) before even considering whether:

> ... the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased (cited in para 14 above);

(v) I must first be satisfied deep down in my hearts of hearts that I would decide the case before me based only on the relevant facts and law. I am satisfied that I would as it is the only way or it is the right way to proceed to fulfil my oath of office;

(b) public information on judicial commissioners is limited:

(i) in general, the members of public, and even a fair minded and informed observer would not have known about the Prime Minister's role in the appointment and confirmation of judicial commissioners. Even if the 'informed observer' did, such person would also be aware of the supremacy of the oath of office. It is only the publicity generated by this application for recusal that the proverbial 'informed observer' would now aware of the role of the Prime Minister;

(ii) thus, it is not likely that the casual informed observer would harbour thoughts of bias in this case; and

(iii) paradoxically, the reverse is true. If I were to recuse myself on the ground as pleaded by the defendant, it would forever damage the reputation of the judiciary in the perception of the public;

(c) in reality, it is not possible to slant a decision to favour the Prime Minister:

(i) all decisions of a judicial commissioner are subject to appeal (and they frequently are) and revision by the appellate courts. If I would rule in a manner to please the executive, it would be plainly obvious to the appellate judges that I was doing so because the facts and law in any case, by and large, can only support one conclusion and that such conclusion must in any event be supported by judicial reasoning; and

(ii) as the appellate judges are the ones who make up JAC, my record as a judicial commissioner would likely to be irreparably blemished, if I were to do so. It would be naive to assume that the members of JAC do not share their thoughts with one another about candidates coming up for confirmation;

(d) should I be worried about what the Prime Minister thinks of me?

(i) the clear answer to this can be found in the words of Tun Hamid in the article (tab 17 at p 5) exhibited by the defendant in encl 39 to the effect that the Executive does not interfere with the recommendations of JAC:

> Having been a member for three years, speaking personally, I am happy to state that the Commission [JAC] has served its purpose very well, decisions are mostly unanimous and that the *Government has respected*

the Commission's recommendations. (Emphasis added.)

(ii) I am certain there are many judicial commissioners who have delivered decisions against the government of the day and still earned confirmation; and

(iii) thus, while I readily admit to the anxiety of meeting the confirmation criteria of JAC, I have full trust in the system and procedures of the JAC and so should the proverbial 'well informed observer'. Hence it is hard to see how such a person can harbour a perception of bias;

(e) the procedures within the institution of the Judiciary cannot be a basis for recusal:

(i) counsel for the defendant made it clear that they are not questioning my capabilities or my integrity. There is no hint of actual bias, conflict of interest or that I would directly or indirectly enjoy some pecuniary benefit were I to decide in a particular manner;

(ii) the defendant stressed that because of the uncertain tenure of judicial commissioners and the role of the Prime Minister in this case, there is a real danger of a perception of bias. Hence the defendant is seeking recusal not because of me as a person but on the basis of judicial commissioners as part of the judiciary;

(iii) I repeat the words of Tan Sri Idrus Harun FCJ (cited in para 8 above) in answer to this:

> Judges enjoy a presumption of impartiality in the performance of their judicial functions. However, such presumption is rebuttable, but only with cogent evidence and in appropriate cases that he may recuse himself. This proposition has found favour with local cases which in summary show that *the law will not suppose a possibility of bias in a judge who is sworn to administer impartial justice and whose authority greatly depends on that presumption and idea.*

(f) would the 'fair minded observer' perceive that I would be instructed by senior members of the judiciary to act or to decide in a particular manner beholden to the Prime Minister:

(i) not too long there were well publicised allegations by a senior member of the judiciary that judges were pressured or influenced to decide on cases or act in a particular manner;

(ii) these allegations remain as what they were originally — allegations. Unless they are proven it is wrong to assume that the public would conclude that judges do not have full independence. Even the judiciary has the right to the presumption of innocence;

(iii) during my nine months on the bench I can categorically state that I have never been instructed, hinted or urged by my 'bosses' the Chief Judge of Sabah and Sarawak nor the Chief Justice, or by any judge for that matter, on how I should decide in any dispute. Despite my lack of seniority and judicial experience I have full and unfettered independence in deciding all cases as I see judicially fit;

(iv) I can also say, and as the plaintiffs have exhibited in their submissions, that the reported decisions I have made include decisions that do not favour the government of the day;

(v) therefore, the public can be comforted, and it needs to be said that, the very best ideals of an independent judiciary are alive and well in Malaysia. Any attempt to subvert these ideals must be firmly resisted; and

(vi) to suggest that judicial commissioners can be perceived as biased because of their temporary tenure and that their appointment and future depend on the Prime Minister is itself an affront to the judiciary;

(g) the Judiciary in Malaysia is independent:

(i) I cannot assert this point better than to repeat the words of the Chief Justice of Malaysia Tan Sri Tengku Maimun bt Che Mat which were quoted at the *Opening of the Legal Year 2020 in Putrajaya* barely a fortnight ago on the 10 January 2020:

> On the independence of the judiciary, it is important to ensure that individual judges and the judiciary as a whole are impartial and independent of all external pressures and of each other, so that those who appear before them and the wider public can have confidence that their cases will be decided fairly, free from any interference, be it from litigants, the Executive, the media, powerful individuals or entities, and from other judges.
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> To judges, I would say this. The work of a judge is daunting. Instead of brooding over what others think and say of you, you should rather channel your time and energy to strive and work hard — to dispose cases and write grounds of judgement on time. You have a duty to discharge and that duty must be discharged well.

(h) I should not be too eager to recuse myself:

(i) I refer to the decision of the Court of Appeal in *Wong Kie Chie & Ors v Kathryn Ma Wai Fong (as the personal representative, executrix and trustee of the estate of the late Wong Kie Nai) & Anor and other appeals* [2017] 3 MLJ 350 was cited by the plaintiff. I agree with the defendant's counsel that this decision by the rule of stare decisis must take a back seat to the more recent Federal Court decision in

Tun Dato Seri Arrifin. But the observations of Vernon Ong JCA (as he then was) in this case merit consideration:

> At this point, it is pertinent to emphasise that circumstances amounting to perceived or apparent bias are so varied that great reliance must be placed on the judgement of the judge. At the end of the day, the decision whether to recuse from the case will depend fundamentally on the particular facts and circumstances of each case and the court should be vigilant not to allow parties to do judge shopping by recusal of judges (*Locabail (UK) Ltd*; *Dato Tan Heng Chew*). Whilst it is important that justice must be seen to be done, it is equally important that judges discharge their duties to sit, do not, by acceding too readily to suggestions of apparent bias, encourage parties to believe that by someone thought to be more likely to decide the case in their favour (*Re JRL ex parte CJL* (1986) 161 CLR 343).
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> Accordingly, judges should balance properly their competing duties as judges when recusal applications fall to be decided by them. Settled principles dictate that judges have a duty to sit and adjudicate on cases allotted to them, displaced only when there are objectively justifiable grounds for recusal, that litigants cannot judge-shop and judges cannot case-shop and that the administration of justice is served as much by a fearless and confident judiciary as a fair judiciary.

CONCLUSION

[25] Taking the above reasons into consideration in the light of the test in *Tun Dato Seri Arifin Zakaria*:

> The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased,

[26] I, with hand over heart, rule that there is no real possibility of perceived bias by a fair-minded observer having knowledge of the facts, and I dismiss the defendant's application to recuse me under encl 18. The application, even with the avowed best intentions of the defendant, is an affront to the Judiciary in Malaysia and hence frivolous and without merit. I therefore award costs to the plaintiffs in the sum of RM50,000.

[27] One good thing has emerged from this application for which I am grateful to the defendant. I now truly understand, and with sharp focus, the true meaning of discharging my judicial duties, *without fear or favour*.

Defendant's application dismissed with costs of RM50,000 to plaintiffs.

Reported by Dzulqarnain Ab Fatar